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LOK SABHA

The following report of the Joint Committee on the Bill to provide, in the economic and financial interests of the community, for the control of the production, supply, distribution, use and possession of, and business in, gold and ornaments and other articles of gold and for matters connected therewith, was presented to Lok Sabha on the 11th September, 1964:—

COMPOSITION OF THE JOINT COMMITTEE

Lok Sabha

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

2. Shri D. Balarama Raju
3. Shrimati Renuka Devi Barkataki
4. Shri Bali Ram Bhagat
5. Shri Laxmi Narayan Bhanja Deo
6. Shri B. L. Chandak
7. Shri Tridib Kumar Chaudhuri
8. Shri Yudhvir Singh Chaudhary
9. Shri Homi F. Daji
10. Shri M. M. Haq
11. Shri Prabhat Kar
12. Shri P. G. Karuthiruman

13. Shri Kindar Lal
14. Shri H. V. Koujalgi
15. Shrimati Sangam Laxmi Bai
16. Shri Mathew Maniyangadan
17. Shri M. R. Masani
18. Shri Jashvant Mehta
19. Sardar Gurmukh Singh Musafir
20. Shri Chhotubhai M. Patel
21. Shri T. Ram
22. Shri Shivram Rango Rane
23. Shri S. C. Samanta
24. Shri Era Sezhiyan
25. Shri Sheo Narain
26. Dr. L. M. Singhvi
27. Shri Rameshwar Tantia
28. Shri Balgovind Verma
29. Shri Bhishma Prasad Yadava
30. Shri T. T. Krishnamachari

Rajya Sabha

31. Shri Mahabir Dass
32. Shri Suresh J. Desai
33. Shri B. K. Gaikwad
34. Shri I. K. Gujral
35. Shrimati Nandini Satpathy
36. Shri C. D. Pande
37. Shri Dahyabhai V. Patel
38. Shri P. Ramamurti
39. Shri Shiva Nand Ramaul
40. Shri V. C. Kesava Rao
41. Shri Sherkhan
42. Shri Mahabir Prasad Shukla
43. Shri Rajendra Pratap Sinha
44. Shrimati Tara R. Sathe
45. Shri A. M. Tariq.

DRAFTSMEN

1. Shri S. P. Sen Varma, *Special Secretary, Legislative Department, Ministry of Law.*
2. Shri K. K. Sundaram, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri V. T. Dehejia, *Secretary, Ministry of Finance.*
2. Shri B. D. Pande, *Gold Control Administrator and Additional Secretary, Ministry of Finance.*
3. Shri Rama Rau, *Deputy Secretary, Ministry of Finance, Department of Revenue.*
4. Shri C. Chidambaram, *Under Secretary, Ministry of Finance, Department of Revenue.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* to provide, in the economic and financial interests of the community, for the control of the production, supply, distribution, use and possession of, and business in, gold and ornaments and other articles of gold and for matters connected therewith was referred, having been authorised to submit the report on their behalf, present this their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 26th November, 1963. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri B. R. Bhagat, the Minister of Planning and Minister of State in the Ministry of Finance, on the 4th June, 1964 and was discussed and adopted on the 5th June, 1964.

3. Rajya Sabha discussed and concurred in the said motion on the 6th June, 1964.

4. The message from Rajya Sabha was published in the Lok Sabha Bulletin Part II, dated the 10th June, 1964.

5. The Committee held 13 sittings in all.

6. The first sitting of the Committee was held on the 9th June, 1964 to draw up a programme of work. The Committee at this sitting decided to hear evidence of associations etc. desirous of presenting their views or suggestions before the Committee and to issue a press communique inviting memoranda for the purpose by the 9th July, 1964.

7. 1,99,678 Memoranda/representations on the Bill were received by the Committee from different associations/individuals.

8. At their second to tenth sittings held on the 20th to 25th and 27th July, and 10th and 11th August, 1964, respectively, the Committee heard the evidence given by 47 Associations and by Shri V. B. Gandhi, M.P. Shri S. S. Khara, Secretary, Cabinet Secretariat, Shri P. C. Bhattacharya, Governor, Reserve Bank of India, and Shri B. D. Pande, Gold Control Administrator and Additional Secretary, Ministry of Finance.

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated the 26th November, 1963.

9. The Committee have decided that the evidence given before them should be laid on the Tables of both the Houses *in extenso*.

10. The Committee considered the Bill clause by clause at their eleventh and twelfth sittings held on the 12th and 13th August, 1964, respectively.

11. The Committee considered and adopted the report on the 7th September, 1964.

12. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

13. *Clause 1 and enacting formula.*—Amendments made herein are of a consequential nature.

14. *Clause 2: (i) Sub-clause (c).*—The amendment is consequential to the amendment made in clause 13 whereunder a certificate granted under Part XIIA of the Defence of India Rules, 1962, shall be deemed to be a certificate granted under the provisions of that clause.

(ii) *Sub-clause (d) (3) (c).*—The amendment is of a drafting nature.

(iii) *Sub-clause (j).*—The definition of the term “refinery” has been revised to avoid any overlapping between it and the definition of the term “dealer” in clause (d), as both the definitions include the operations of “melting, processing or converting”. Provision has also been made for private individuals taking their gold or ornaments to a refiner for determination of purity of their gold content.

15. *Clause 3: (i) Sub-clause (1).*—This sub-clause has been amended to make it clear that where the Administrator grants a general or special authorisation to make, manufacture or prepare any article containing gold of any purity on an application made by the person concerned, he may prescribe that such application be accompanied by such fee and/or supervisory charges as he may specify.

(ii) *Sub-clause (3).*—It has been provided in this sub-clause that the dealer referred to therein will include a certified goldsmith so that he could accept gold ornaments of any purity for making new ornaments having gold of a purity not exceeding fourteen carats.

16. *Clause 4.*—The Committee feel that the existing provision for stamping of primary gold is too rigorous as it imposes an obligation for stamping each piece of gold even on private individuals who intend to sell one or two pieces. Further, stamping of special forms of primary gold, such as wires and leaves, not susceptible of bearing a stamp, is not practicable. The Administrator has been empowered to exempt such cases from the requirement of stamping.

A consequential change has been made in sub-clause (3) in order to bring it in line with the provisions of clause 3(1) relating to the payment of fee on application and supervisory charges.

17. *Clause 7: (i) Sub-clause (6).*—The proviso to this sub-clause has been amended to enable the Administrator to reject an application for the grant of a dealer's licence on the ground that the applicant has been guilty of smuggling offences such as those under the Customs Act, 1962 or the Foreign Exchange Regulation Act, 1947.

(ii) *New sub-clause (8).*—Although licences granted to dealers under Part XIA of the Defence of India Rules, 1962, have been saved by the saving provisions contained in clause 43(2), yet having regard to the importance of the matter, new sub-clause (8) has been inserted by the Committee for the purpose of expressly saving such licences.

18. *Clause 8.*—New sub-clause (9) which corresponds to new sub-clause (8) of clause 7 seeks to save expressly licences granted to refiners.

19. *Clause 9.*—This clause has been amended to enable the Administrator to cancel the licence of a dealer or refiner where such dealer or refiner has been guilty of smuggling offences such as those under the Customs Act, 1962 or the Foreign Exchange Regulation Act, 1947.

20. *Clause 13.*—This clause has been amended—

- (i) to enable the Central Government to impose, by rules, restrictions relating to the purity and weight of gold in ornaments, remanufactured out of old ornaments containing gold of a purity exceeding 14 carats;
- (ii) to make it clear that after the commencement of the Act, only a dealer who has been recognised as a certified goldsmith before such commencement can function as such goldsmith and to provide that in exceptional cases the Administrator may accept fresh applications for the issue of certificates;

- (iii) to recognise certificates granted under Part XIVA of the Defence of India Rules, 1962, as certificates granted under the Act;
- (iv) to enable a certified goldsmith who accepts ornaments of gold exceeding 14 carat purity for conversion into new ornaments, to take assistance from other certified goldsmiths who possess equipment for drawing wires or casting dies or who specialise in stone-setting, enamelling or polishing.

The other amendments made in this clause are of a drafting or consequential nature.

21. *Clause 15.*—The amendment to this clause seeks to make it clear that there would be no restriction as to the purity or form of gold which may be received as offering by any religious institution, such as a temple, *mutt*, church, mosque, *gurdwara* or any other place of public worship.

22. *Clause 16.*—This clause as amended exempts a family consisting of husband, wife and one or more minor children, or any two or more of them, from making a declaration under the provisions of this clause, if the total weight of gold other than ornament (whether contained in one or more pieces) owned by such family does not exceed 100 grammes. However, it has been provided that the Central Government may, if it considers it necessary so to do for carrying out the purposes of the Act, require that in respect of gold exempted under clause 16, declarations should be made to the Administrator by such person and in such form and manner and within such time as may be prescribed by the rules.

23. *Clause 17.*—This clause has been amended to exempt a person or family from making a declaration as to the gold ornaments owned by such person or family if in the case of an individual, the value calculated in accordance with the rules to be made in this behalf, of such ornaments does not exceed rupees twenty-five thousand and in the case of a family, such value does not exceed rupees fifty thousand.

24. *Clause 26.*—The clause has been amended, in the main, to provide for the following:—

- (i) Instead of “any person” only officers should be authorised by the Administrator for conducting searches and seizures under the provisions of the Act.

- (ii) An authorised officer may seize any gold or document which he finds secreted about one's person after conducting a search in accordance with the provisions of the Act.
- (iii) Where an officer arrests a person or seizes any gold, document or other goods from the possession of a person, a copy of the statement, if any made, by such person before that officer, shall be furnished to him on demand.

Other amendments made in the clause are drafting alterations made for clarification.

25. *Clause 28.*—The clause has been amended to provide that the maximum limit of fine in lieu of confiscation of a conveyance or animal used for the carriage of goods or passengers for hire should not exceed the value of such conveyance or animal. In the original clause the limit of fine was not to exceed the value of gold sought to be conveyed or carried.

26. *Clause 29.*—The amendment made in this clause seeks to make clear the intention underlying the provision.

27. *Clause 30:* (i) *New provisos to sub-clause (1).*—Provisos have been added in order to bring the adjudication provision in conformity with the requirements of natural justice, namely, issue of show-cause notice, grant of reasonable opportunity for personal hearing etc., to the accused person.

(ii). *New sub-clause (4A) [renumbered as sub-clause (5)].*—This confers revisionary powers on the Administrator in cases of adjudication where no appeal has been preferred.

(iii) *Sub-clause (7) [renumbered as sub-clause (8)].*—The amendment to this sub-clause seeks to provide that the limit of fine in lieu of confiscation of any gold, conveyance or animal shall not exceed the value of such gold, conveyance or animal.

The other amendments in the clause are consequential or of drafting nature.

28. *Clause 31.*—The clause has been amended—

- (i) to confer power on the Court to award punishment of imprisonment for a period of less than the minimum period of six months, if for special and adequate reasons to be recorded, the Court considers it necessary to do so;
- (ii) to clarify that the penalty under the proviso to sub-clause (3) of this clause should be imposed by departmental adjudication.

29. *Clause 35: sub-clause (2).*—This sub-clause has been amended to empower the Central Government to make suitable modifications and adaptations in the provisions of sections 11, 15 and 23 of the Central Excises and Salt Act, 1944, in their application to the matters referred to in this sub-clause.

30. *Clause 42: sub-clause (4).*— This sub-clause has been amended to bring it in line with the model clause relating to laying of rules before the two Houses of Parliament as given in para 45 of the Seventh Report of the Committee on Subordinate Legislation (Second Lok Sabha).

31. The Joint Committee recommend that the Bill as amended be passed.

NEW DELHI;
The 7th September, 1964.
Bhadra 16, 1886 (Saka).

S. V. KRISHNAMOORTHY RAO,
Chairman,
Joint Committee

MINUTES OF DISSENT

I

By the time members of the Joint Committee on this Bill had read the memoranda presented to the Committee and heard the oral evidence, it was clear to some of them that no purpose whatsoever would be served in placing the Bill on the statute book. Not only was the weight of evidence adduced before the Committee overwhelmingly against it but it checked with the results of one's own study.

The desire for gold or the "lure" of gold is partly due to its aesthetic qualities and traditional prestige but primarily as a secure form of the investment of savings.

The continuous erosion in the value of the rupee, which is now estimated to be worth 17 paise of the pre-war rupee in terms of purchasing power, has increased the value of all other articles and commodities and raised prices all round. Because of the prestige of gold and its high value in terms of bulk, this particular metal has been favoured over other objects of value as a form of retaining savings. For the peasant in the villages, where there is hardly any alternative due to the absence of banking facilities, gold provides the most important security for credit. The refusal to allow imports to meet indigenous demand has created a black market and this, in turn, has provided a tremendous incentive to smuggling.

There is agreement on the proposition that it would be all to the good if people would invest their saving in industry and business by buying shares instead. But for that to happen, incentives are needed, such as a sense of security to the entrepreneur and a good rate of return on the investment. Today, such security is conspicuously absent in India because of the threat of nationalisation, the network of controls and the vindictiveness often underlying Government's policy toward people's enterprise; and the return on capital is inadequate because of excessive and savage taxation. Unless these basic policies change, no power on earth can stop people from wanting to hold gold and others from smuggling it to meet the demand. The only way to make people lose the glamour of gold is to offer an Honest Rupee whose value tomorrow and ten years hence will be the same as it is today.

Far from creating any such sense of security, this Bill, by seeking to create a near monopoly in gold in the hands of Government, will make people feel that the Government, which gives them such sermons about the uselessness of gold, is itself trying to lay its hand on all the gold in the country.

In such a situation, the present Bill is an exercise in futility. Worse, it reeks of hypocrisy, since even its proponents must know at the back of their minds that every one of its provisions will be violated.

Tempted by the huge profit to be obtained from buying gold abroad and selling it here, the smuggler will continue his activity with an added margin of profit balancing the added risk of punishment. Dealers and goldsmiths will continue to make 22 carat ornaments on the sly instead of making them openly and honourably so long as the women of India prefer the real article to the 14 carat variety enjoined by this law. All that this measure will succeed in doing is to tempt honest people to be dishonest. It will lessen respect for the law. It will help to create opportunities for further bureaucratic harassment and corruption.

Even to the extent that the law is obeyed, it will do little good to the country and the economy. People will instead keep their savings in diamonds, silver grain or other articles whose value may be expected to appreciate, while the rupee pursues its Rake's Progress downwards.

Prices, like water, find their own level. Where the law seeks to keep down artificially the price of one commodity, as in this case, the price of all other commodities will, to that extent, be pushed up further. The lady, as a British economist has written, goes to a plastic surgeon to have her double chin removed, only to discover that the bulge has come up at the back of her neck!

After all, the proof of the pudding is in the eating. During the last fifteen months when Gold Control has been in operation, there has been no evidence that the lure of gold has diminished or that the gap between the indigenous and world price of the metal has narrowed or that smuggling has decreased.

This Bill fights a symptom while the disease remains unchecked. It must, therefore, fail in its purpose. The only remedy for the ills that the Bill seeks to remove is to give up the inflationary policies of Government by abandoning deficit finance, remove excise duty on the needs of life, and scrap the wrong order of priorities embodied in

the Second and Third Five Year Plans by giving priority to agriculture, road building and other high-and-quick-return enterprises and postponing low-and-slow-yield projects like heavy industries.

A certain amount of gold should be allowed to be imported into the country to meet indigenous needs. A specially beneficial manner in which this can be done is for gold to be brought within the scope of the various Export Promotion schemes in existence as an item of incentive imports. This will have the added advantage that gold will be bought and imported at the international price and no expenditure of foreign exchange on the part of Government will be involved.

It is a matter of deep regret that the Joint Committee could not be persuaded to appreciate these facts and to advise Parliament that this measure should not be proceeded with further. Nor, it must regretfully be said, has the Bill emerged from the Joint Committee improved in any material respect. It has, therefore, become necessary for me to append this minute of dissent to the Joint Committee's Report.

NEW DELHI;

M. R. MASANI

Dated the 7th September, 1964.

II

While agreeing with Shri Masani's Minute of Dissent I would like to add that I feel that it has not been possible to carry out properly the intentions with which Parliament appointed the Joint Committee. Visiting at least certain important centres of industry connected with the manufacture of gold ornaments and meeting different associations would have enabled the Committee to gather much more information than what was gathered from representatives who came all the way to tender evidence before the Committee. But this was not done. The information regarding rise in price of gold, indicating a diminishing sense of confidence or increasing lack of faith in the currency, rise in the general prices and rise in value of the Indian rupee and the Pakistan rupee and other currencies in the free markets of the world, which should have been made available to the Committee, was not provided by the Government, even when such information was sought.

It is obvious from the answers given by the different witnesses that no effort was made to ascertain from the trade and people who knew something about gold and gold trade, as to how control on

gold could be introduced smoothly. Instead the measure seems to have been rushed into on the advice of certain Government officers who are supposed to have given it, apparently based on national ideas. It is a matter of regret that a "responsible" officer even went to the extent of using the sacred name of Gandhiji, when he was blissfully ignorant of the other more important writings of Gandhiji. He had to admit that his enquiry was based on his knowledge of certain data collected by himself of three districts of Uttar Pradesh. This shows the haphazard manner in which the measure was rushed into. The Government, therefore, would be well advised to drop this haphazard piece of legislation and to bring a properly considered Bill before Parliament.

NEW DELHI;

DAHYABHAI V. PATEL

Dated the 7th September, 1964.

III

The main purpose of the Gold Control is to (a) stop smuggling of gold into the country and thereby save foreign currency India is losing indirectly and (b) reduce the public craving for Gold (bullion and ornaments) by lowering the purity of gold in ornaments.

Whereas these aims can be achieved by direct and positive methods, the Government have adopted negative recourse whose effectiveness has proved to be extremely doubtful.

Under the D. I. R. and through the present Bill the Government are restricting the purity of new gold ornaments to a maximum of 14 carats probably with a view that the public would not like it and, therefore, would not buy any ornaments and, thus, demand for gold will automatically fall resulting in fall in prices of gold and stoppage in smuggling of gold.

However, the scheme may work so long as the people maintain an apathy for 14 carat gold ornaments. But, once—in the absence of any better quality ornaments—the people start taking to 14 carat gold, they will be buying more gold ornaments; because, they will always calculate the actual amount of gold in the ornaments purchased. As such, the demand for gold will not be reduced. In fact it will grow with the growth of population and improvement in standards of living. Then the price of gold will follow the demand and supply principle and the smugglers will be active whenever there will be wide disparity between the internal and international prices of gold.

Like the Indian muslin, Indian ornaments have also developed through past centuries into a highly sophisticated art which should be preserved at all cost to provide employment to the highly skilled artisans. The art should be fully exploited to earn foreign exchange through exports. The Export Promotion Department of the Government should look to this side of the problem. If we lose this art now, it will be impossible to revive it in future—just as we have lost the art of making muslin. Rehabilitation of the artisans in other trade and industry will not be in the best national interests.

There can not be two opinions about the need for controlling the price and distribution of Gold. This work should be taken over by a statutory body like the S.T.C. or the Khadi Gramodyog Commission which alone should buy and sell gold in the country. If any person wants to sell gold, he can do so only to the statutory body established by the Government for this purpose or its authorised agent in the locality. Similarly, if any one wants to buy gold, he must approach the statutory Corporation or its authorised agents. Goldsmiths and dealers should be allowed to fabricate ornaments. They will not be allowed to stock, sell or purchase gold. All persons and institutions must declare the amount of gold held by each of them either in bullion or in ornaments or in any other form over a prescribed limit. Thus, all chances for clandestine possession of gold will be eliminated and smuggling of gold will be stopped automatically.

If the aforesaid proposal is adopted, there will be no need for restricting the purity of gold in ornaments. Actually it should be left to the taste and discretion of the buyers. In some parts of the country there is a practice of making ornaments of almost pure gold; whereas, in Bengal, they always use 22 carat Guinea Gold. If the people develop the taste for 14 carat or even lesser purity of gold, there should be nothing to stop them. But there should not be any imposition of 14 carat on unwilling buyers who will try to evade the law and secure pure gold secretly and offer, thereby, incentives to the smugglers. The imposition of 14 carat will have just the opposite effect.

Gold serves dual purpose for the villagers and men of limited means. Traditionally it is used as ornaments for which the Indian womenfolks have developed great attachment. The entire social structure of the whole society will be upset if the public are compelled overnight to switch over to 14 carat gold when they had all along been used to 22 carat and pure gold. We have attended quite a few marriages during the last eighteen months; everywhere the

ornaments were made of pure gold. Of course, diamond studded jewellerys are the fashion with the rich people. We understand that it is the same in other States also. No one will believe that these are old ornaments given in present day marriages.

Gold and gold ornaments are solid investments for the villager and the peasant who may require some cash money at a very short notice either for the agriculture or for his family exigencies. Our rural banking system being next to nothing, he always hopes to raise some loans by pledging his ornaments. To him gold is not only for ornaments; it is a provision for his rainy days as well. Some people say that the present food situation has been accentuated by the restrictions on gold trade. Previously the farmer used to buy gold by selling his surplus crop. But as there is no gold for them to buy now, they are holding the extra crop which used to come to the market in the past. This needs serious thinking.

The Bill seeks to confer unlimited power on the Administrator who may quite likely commit excesses. Such wide power, vested in a single person, is incompatible with Social Democracy. The aggrieved parties should have the right to appeal to the higher authorities and to the Court of Law.

The Gold Control is a complex proposition having many facets affecting men in almost all walks of life. The debate in the Parliament, the discussion in the Joint Committee and evidence given before, and the representations received by, it have brought out many problems which need careful study and acceptable solutions.

Moreover, at this time of National Emergency we are required to see with a watchful eye that a thorough economy is effected in the administration to save money for investing in some more fruitful investments. In the words of our Prime Minister also we should spend only where it is necessary and that too on a priority basis but here we are going to spend a huge amount of Rs. 28,84,000 on the cadre of new class of Officers which we are going to create for popularising 14 carat gold jewellery. This sort of jewellery is not going to benefit the nation in any way except that only a few will come to occupy the privileged position.

This Bill is going to impose a huge liability on the nation which we otherwise can easily dispense with for the present. Rs. 20 crores as goldsmiths rehabilitation charges and income tax loss of more than 27 crores per annum from the trade are some of the amounts which we have to reckon with, while going into details of this Bill.

It is, therefore, requested that the control on quality should be done away with and a ceiling on the possession of gold imposed keeping in view the socialistic pattern of society which we are pledged to establish in our country. What the nation is required to do is to plug the sources which provide foreign exchange to the smugglers of gold who are out to harm the interest of the Nation. For this purpose only a few Officers will be needed to curb the evil.

NEW DELHI;
Dated the 10th September, 1964

B. L. CHANDAK
M. M. HAQ
BALGOVIND VERMA
MAHABIR PRASAD SHUKLA
SHERKHAN
MATHEW MANIYANGADAN
KINDAR LAL
H. V. KOUJALGI
T. RAM

IV

I am constrained to append a note of dissent as I have certain suggestions regarding the Bill which is different from the Report of the Joint Committee. The Provisions of this Bill generally follow the existing provisions of the Gold Control Rules with some new provisions for fulfilling the object of the Gold Control Rules. The Gold Control Rules were enacted as an emergency legislation in the exercise of the extraordinary powers vested in the Central Government under the Defence of India Act, 1962. So, the emergency legislation is now being converted into the ordinary legislation. Such being the case, a special care should be taken to see that the fundamental rights of the people should not be jeopardised. I offer my criticism in the following terms :—

- (1) In the sub-clause (j) of Clause 2, after the words “means a place”, the words, “other than the workshop of a certified goldsmith” should be inserted, as this sub-clause, as at present worded, would create anomalies and confusions. Even a place where gold is melted, otherwise than for purposes of refining, would come under the definition of Refinery. This would hit the certified goldsmith also.
- (2) Similarly, the bar in clause 4 regarding the purity of gold that it should not be more than 14 carats is not desirable. Instead of 14 carats it should be 22 carats.

- (3) For the whole sub-clause (2) of clause 7, a provision like the following should be substituted:

“A licence under sub-section (1) may contain such conditions and restrictions not inconsistent with or repugnant to any provisions of this Act, as may be prescribed.”.

As recommended by the Committee, the Administrator is vested with very wide and arbitrary powers. He is permitted to use different types of conditions and restrictions on different licence holders. This will make him like a ‘Mughal Emperor’. If this provision remains, it will clearly infringe the fundamental rights guaranteed by the equality clause of the Constitution. The power of discrimination, is vested in the administrator and this was protected under the Gold Control Order which is based on Defence of India Rules, but there is no justification in keeping such wide powers in the ordinary law of the land.

- (4) Regarding declaration as to the possession of ornaments, clause 17(1), I think this provision is not necessary at all. Besides, this is too arbitrary; for such type of the legislation the Government should come with another Bill in the Parliament. The new provisions, as suggested by the Joint Committee, regarding declaration by a person in possession of ornaments valuing Rs. 25,000 and a family possessing ornaments of Rs. 50,000 is very arbitrary and it does not stand to reason. This type of the provision will directly hit the fundamental principles of the long and established traditions of the people.
- (5) So also, regarding the sub-clause (2) of clause 30, I strongly feel that instead of Administrator the provision should be made for the Appellate Tribunal. An appeal to the Administrator, who is an executive officer is not calculated to be consistent with the established principle of dispensing justice. To combine in one man the executive and appellate authority is repulsive to the all notion of fair justice.

NEW DELHI;

YUDHVIR SINGH CHAUDHARY.

Dated the 10th September, 1964.

V

I entirely disagree with the decision of the majority of the Joint Committee to leave practically unchanged Clause 4 of the Bill which restricts the making, manufacturing and preparation of gold ornaments having a purity exceeding 14 carats. The majority agreed with the Government's view that this would lead to a reduction of public

demand of gold on the market for the making of ornaments and would eventually bring down internal price of gold nearer to the international price. The experience of the working of the 14 carat rule for the past 21 months since Gold Control was promulgated do not warrant this view.

I am of the opinion that quality control of gold ornaments has or can have no relation with the declared objectives of the Gold Control policy. These objectives, as I have understood them are: firstly to make smuggling of gold into the country more difficult by making it less easy to dispose of smuggled gold in the internal market and secondly, to reduce the internal demand of gold from the public for the making of ornaments. I fully agree with both of these objectives. But so far as the second objective is concerned, I am of the opinion that a stricter quantity control (as distinguished from quality control) i.e., restrictions on the total quantity of gold ornaments that a person or a declared family unit would be permitted to hold, would have secured it much more effectively without creating those numerous problems especially the stupendous problem of unemployment among goldsmiths and people in ancillary trades and their rehabilitation, that have been created since the Gold Control Policy was initiated in January last year.

I want in this connection also to put on record the fact that in my view a proper consideration of the various provisions of the Bill by the Joint Committee was essentially hampered from the very beginning by a vagueness in the definition of its basic objectives or underlying principles, which it was beyond the purview of the Committee to change. The Statement of Objects and Reasons of the Bill hardly provided any guide in this regard. For this Statement did no more than merely say that the Bill only sought to place the provisions relating to the control of gold as promulgated by Part XIA of the Defence of India Rules on a permanent footing. In the absence of any preamble clause to the Gold Control Rules under Defence of India Rules, wherefrom the object of framing those rules could be found, one had to seek such guidance from the provisions of those Rules, especially from Rule No. 126(2), which defined the duties of the Gold Control Board. The Board (now superseded by the Administrator) was to find out measures by which the use and consumption of gold should be discouraged and the demand for gold from the public will be reduced. Apart from this, there are statements made from time to time on the floor of the two Houses of the Parliament in connection with the Gold Control Policy and the present Bill. As the Finance Minister and his predecessor stated on more than one occasion the main purpose of quality control is the

prohibition of the production of gold ornaments of a higher purity than 14 carats to reduce the demand of gold.

I entirely fail to see how if public are allowed to possess gold ornaments above 14 carats purity in unlimited quantities as at present, if facilities are open to the public to have these ornaments repaired, re-made and re-manufactured even now, the mere imposition of restrictions on the making of new gold ornaments above 14 carats is going to reduce the extent of popular demand for gold on the market. If anything in the background of the present set of provisions in regard to the unlimited possession of gold ornaments above 14 carats, of 14 carats and below, the continuance of formal restrictions placed on the making of new ornaments above 14 carats would tend, all the more, to increase public demand for them and would prevent the internal market price of gold from coming down. For the demand for gold ornaments above 14 carats and the facilities for making them in a clandestine fashion without too demonstratively attracting the attention of the Gold Control Administration would be there under Gold Control measures as conceived now. I have failed to understand which is more basic to the declared objective of Gold Control Policy—a reduction in the internal demand for gold for the making of ornaments or the 14 carat rule. In my view the first objective should be regarded as the basis one and it is fully capable of achievement even without any restriction being placed on the making of new ornaments above 14 carats.

I am one with Government and the majority view in the Joint Committee in seeking to reduce the demand of gold in the internal market and to wean away the people from the lure of gold but the 14 carat quality control rules are hardly the method of securing that objective.

Taking the framework of Gold Control Policy as it has emerged now, after the relaxation given since September 21, 1962 in regard to repairs and re-making of gold ornaments above 14 carat purity by self-employed goldsmiths, I generally support these relaxations as provided in relevant Clauses of the Bill (Chapter III, clauses 7 to 15), but I feel in order to rehabilitate the unemployed goldsmiths, gold artisans and other self-employed people engaged in connected trades properly, the scope of the relaxation given should be widened further and should be supplemented by positive measures in other directions so that the business of self-employed goldsmiths and allied trades can be organised on a proper basis as a recognised cottage industry organised on a cooperative basis.

Lastly, I want to record my strong dissent from the provisions of Clause 17 of the Bill approved by the majority of the Joint Com-

mittee which empowers the Government to demand a declaration as to the extent of gold ornaments in the possession of a person or class of persons or family above 25 to 30 thousand rupees. This is now no more than an enabling provision and does not seek to put any restriction on the possession of gold in the form of ornaments by a person or a family. I feel, unless some specific restriction is placed on the possession of ornaments backed by adequate administrative apparatus and personnel to enforce this restriction, the present enabling provision in the Bill requiring the declaration of the possession of ornaments would not help to reduce the market demand for gold to any sizeable extent. The upper limit allowed for quantity of gold ornaments to be held without declaration has also been put too high. The form in which this provision has been conceived would not serve to secure any of the declared objectives of Gold Control Policy initiated last year but could easily be transformed into a vexatious and oppressive measures for some sections of the public.

I also feel that the large measure of discretionary powers vested in the Gold Administrator in regard to every major control provision in the Bill is objectionable both in principle and also from the point of view of practical effectiveness of controls sought to be imposed. The gold Administrator would of course exercise these powers in accordance with prescribed rules within the framework of the Government's policy. But if in regard to every control measure discretionary powers are taken to grant exceptions, doubts would surely arise about the degree of firmness or finality in regard to them.

NEW DELHI;

TRIDIB KUMAR CHAUDHURI

Dated the 10th September, 1964.

VI

The Gold Control Order was promulgated with the objects (1) to prevent smuggling of gold and thereby conserve foreign exchange, (2) to disgorge hoarded gold and (3) to reduce the price of gold and the demand for gold. The result of the working of the Gold Control Rules for a period of more than eighteen months has shown that none of the objects have been achieved whilst extreme hardships and unforeseen difficulties have been created to innumerable goldsmiths and artisans resulting in unemployment, starvation and deaths.

There can be no two opinions that smuggling of gold should be stopped. As a matter of fact, smuggling of not only gold, but of

anything in any form, should be dealt with severely. The remedies for smuggling are greater vigilance and stricter enforcement of law. Smuggling is not done by a poor goldsmith or by a petty dealer, but by an organised racket of unscrupulous financiers and big business, who, by ingenious ways of under-invoicing and over-invoicing, are able to accumulate unaccounted foreign exchange and then utilise their ill-gotten gains to smuggle in gold. Instead of adopting a negative aspect of gold control, the Government should come down heavily on these anti-social black-marketeers and financial tycoons. There is no other effective way to stop smuggling of gold.

It is worthwhile to note here, that not a single witness, be he a goldsmith or artisan or dealer, was in favour of the Bill. The burden of song of all these witnesses, not to speak of the innumerable memoranda received, was "Scrap the Gold Control". It is obvious to all that even opinion within the Congress Party is by no means unanimously convinced about the wisdom or utility of the Gold Control.

In a highly inflationary economy, as is now in India, where there is a continuing fall in the value of currency, it is no wonder that people look upon gold as a measure of safeguard and security against the inflation. The lure of gold can be brought down only if the inflation is curbed, currency is stabilised and other avenues are open for saving and protecting the full value of the hard-earned incomes of the people.

The Bill in its present form bristles with many loopholes and lacunae, that it will defeat the very purpose for which it is proposed. It will be creating more problems than solving some. The Government should go in for more comprehensive and vigorous measures to root out smuggling and conserve foreign exchange.

NEW DELHI;

ERA SEZHIYAN

Dated the 10th September, 1964.

VII

We are of opinion that this Bill is absolutely unnecessary and will not serve the purpose which it is intended to.

The main purpose of the Bill, it is stated, is to prevent smuggling of gold by reducing its demand. Experience has shown that this has not been possible.

Gold is smuggled into the country by those people who obtain foreign exchange resources illegally. The export and import trade of the country is in the hands of private individuals or firms mainly. This has enabled many of big export and import firms to indulge in all sorts of mal-practices and secure foreign exchange resources secretly. This illegal foreign exchange is repatriated into the country by means of smuggling gold and other valuable articles, since it cannot be brought into the country legally.

Under these conditions the only effective way of saving the foreign exchange so badly needed for our country's development is for the Government to take over the import and export trade in the principal commodities. This will automatically bring down smuggling of not only gold but of many other luxury articles like watches whose smuggling is actually on the increase.

So long as the Government is not prepared to attack the evil at its source, any attempt to present smuggling by such measures as contemplated in this Bill will not succeed. On the other hand it will only lead to harassment of working goldsmiths and to creating more opportunities for corruption. Hence we are of the opinion that this Bill should be dropped.

NEW DELHI;

P. RAMAMURTI

Dated the 10th September, 1964.

B. K. GAIKWAD

VIII

The Joint Committee considered the Gold Control Bill and took evidence of different organisations of Goldsmiths and trade. The deliberations did not take us further. Really speaking there is no dispute regarding the objective of the Bill. Everybody agreed that objective was laudable, the drain of foreign exchange due to smuggling should be stopped and Government should take harsh steps against the smugglers. The disease has gone deep down, but the remedy suggested is also not effective due to our last 8 months' experience. It requires a second thought. At present in spite of the Gold Control Order under the Defence of India Act and the emergency through which the country is passing, smuggling has not decreased. Another important point is the attitude of the people. Government should draw out a long term plan to educate the people to change their habit and proper climate should be created. The

third point is unaccounted money playing important part in smuggling. Unless the Government take steps to root out this malady, nothing substantial could be achieved by this measure. I am one with the Government and majority view of the Joint Committee. in seeking to reduce the demand of gold in internal market and to wean away the people from lure of gold. I doubt very much whether quality control will be able to solve the problem. The Problems of certified goldsmiths have not been appreciated by the Committee. They should have been allowed sufficient gold to work.

NEW DELHI;

JASHWANT MEHTA

Dated the 10th September, 1964.

TRIDIB KUMAR CHAUDHURI

IX

We are unable to support the Bill in its present form, despite the slight improvements made by the Joint Committee.

This Bill has been brought after the experience of the working of the Gold Control Order for over a year. It is now clear beyond doubt that the Order as it stood and was worked has failed to fulfil the objectives aimed at viz. (i) to stop or reduce smuggling of gold (ii) to reduce its price (iii) and discourage its use. In fact it has caused great misery, unemployment and has rendered the trade in Gold a Black Trade. No lessons seem to have been learnt from this experience and very little relief is sought to be provided by the Bill.

The problems of certified goldsmiths have not been fully appreciated. Provision ought to have been made to allow them to keep and use gold without which it is difficult for them to remake ornaments permissible under the law.

The problems of small dealers have been totally neglected.

It is wrong and unconscionable to put a total bar on acquisition of gold ornaments on the one hand, and to perpetuate the unrestricted ownership and enjoyment of ornaments in the hands of the few. This baliies the declared socialist objectives of the Congress.

Clause 17, even as amended, is too vague and wide. It leaves wide discretion with the Government and the delegation of such

uncertain power to the Government is bad both in law and in policy.

NEW DELHI;

HOMI F. DAJI

Dated the 10th September, 1964.

PRABHAT KAR

X

To the validity of the objectives underlying the gold control measure and to the efficacy of the scheme embodied in it, I have given my deep and anxious consideration, and although I generally endorse the objectives of the measures which are unexceptionable, I have not been able to persuade myself to join in an affirmation of the Bill as proposed to be reported to the two Houses of Parliament by the Joint Committee. It is, therefore, necessary for me briefly to state my reasons for dissenting with my honourable colleagues in the Committee.

The move to place the gold control measure permanently on the Indian statute book demonstrates that the policy could not in fairness be attributed to the caprice or intransigence of errant individual Minister, and that the measure represents the long term answer of the present Government to the problem of scarce foreign exchange resources and to the problem of smuggling. It appears that the onset of the national emergency in the wake of the Chinese aggression and the spontaneous response of the people to the call for donations in cash and gold was thought by the Government to provide "the psychological opportunity for initiating a bold and determined gold policy". It follows, therefore, that the gold control measure was never in fact conceived as a measure confined to or even necessarily related to the national emergency, which was merely seized as an appropriate psychological turning point. Needless to say that the general response to the gold control measure, which was one of disapproval with varying degrees of vehemence, has belied the assumptions on which the timing and the abrupt technique of the gold control measure was based.

That the gold control measure has been an unpopular measure is incontrovertible and undeniable. To understate the extent, volume and depth of opposition to this measure scarcely does anyone any good and is not consistent with dictates of fairness and good conscience. Indeed those who would lightly or summarily brush aside the chorus of complaints against this measure as emanating from

the solitary class of goldsmiths and dealers are permitting violence to be perpetrated to the very concept of democratic functioning.

Even as partisan a source as the Khera Committee on Gold Control was forced to admit that Gold Control measure had not been well received and the tide of public opinion appeared to be against the measure. The Committee, however, claimed that the reasons for this are to be sought "not so much in any intrinsic or basic contradictions in the Gold Control, but in:

- (a) the lack of concerted political support for the gold policy;
- (b) the somewhat tardy response to the legitimate complaints of thousands of small goldsmiths; and
- (c) the lack of adequate machinery for effective and equitable enforcement of the Control."

Leaving aside the question of intrinsic contradictions in the Gold Control for the moment, it would be pertinent for me to point out that even on the basis of the yardstick employed by the Khera Committee, the Gold Control measure is obviously inopportune, because divided counsels and lack of concerted political support for this measure continue to be the order of the day and because the Government do not have even today a convincing blueprint for the rehabilitation of the lakhs of goldsmiths and their families. I am of the opinion that the machinery adumbrated in the Bill to be reported by the Joint Committee for the enforcement of the control is not likely to prove to be appropriate for an effective and equitable enforcement of the control.

It may be mentioned here that the overwhelming bulk of the 1,99,173 representations and 505 memoranda received by the Committee contain outpourings of disapprobation for the Gold Control and arguments against its re-enactment. All the witnesses appearing before the Committee, with the exception of three official witnesses who were summoned mainly to apprise the Committee with the working of the Gold Control, spoke with a rare unanimity against the Bill. This, I am convinced, was a fairly authentic expression of public opinion, and I do not consider it proper or permissible to ignore it wilfully.

The Committee had the advantage of the testimony of Shri S. S. Khera, the Chairman of the Informal Group on Gold Control constituted by Shri T. T. Krishnamachari, the Finance Minister. I

must say that his testimony in support of the measure was singularly unimpressive and unconvincing. All that Shri Khera was able to muster in support of the Gold Control measure was to take us back to his "basic attitude" which he said was "personal" to him and this was "to put an end to gold". I would like to reproduce a small portion of the questions and answers:

Dr. L. M. Singhvi: It appears from your report that at the time of making the report the amount of non-ornament gold declared under the provisions of the Gold Control Order was of the order of only Rs. 8·15 crores in terms of the international price of gold. It appears therefore that it is right to infer that there has been extensive non-declaration. What would you suggest to secure a more adequate declaration and to formulate such policy to incorporate such provisions that there would be an adequate declaration of gold?

Shri S. S. Khera: I can only go back to my basic attitude, which is personal to me, namely, put an end to gold.

Dr. L. M. Singhvi: How? That is the question.

Shri S. S. Khera: By doing perhaps a number of things. Let no one wear any gold at all. Let everyone round this table discard gold here and now. If you are wearing a gold watch, put it on the table. If your watch has a gold bracelet, put it on the table. If you are wearing a gold ring, put that on the table too. If there is a party at Rashtrapati Bhavan, let everyone who wears a gold ornament be checked and be invited to take it off and put it down. Tackle your family by saying that it is unfashionable, disgraceful, immoral to wear gold."

One would be excused for the feeling that the wholesale advice of laying everything on the Table could not be a safe or useful guide to the formulation of legislative policy or drafting and reporting on a specific Bill. It would be in order to cite a few more samples from Shri Khera's testimony:

Dr. L. M. Singhvi: You say that the basic contradictions are to be found not in the gold control policy but in the fact that there has been a lack of concerted political support to the gold policy. Would it be correct to say that the evidence before this Committee was quite overwhelming in support of this proposition?

Shri Khera: We were taking life as we found it and the fact remains that there is a very mixed attitude to the whole

business of gold. I have a certain attitude to gold; my colleague, Mr. Bhattacharya, for instance, has another. It is like that. I am bound by my attitude but I am affected by the attitude of my friend. So, this must be taken in the light of the personal attitude as well as the very mixed attitude which exists.

Dr. L. M. Singhvi: Did the Committee have an occasion to form any impression or to come to any precise statement in respect of the clandestine transactions of gold after the introduction of gold control and, if so, what were those impressions?

Shri S. S. Khera: We did not make any lengthy or detailed survey. If you will notice, it was not a Committee but it was an Informal Group which was set up on the 4th or 5th September and it submitted its report within a matter of days. It dealt with such data as was immediately available. In the nature of things, a quick report was necessary. Therefore, we did not make a detailed survey.

Dr. L. M. Singhvi: Did the Committee have an occasion to form an estimate of the resources required for an adequate and satisfactory rehabilitation of unemployed goldsmiths?

Shri S. S. Khera: No. We were working purely by rule of thumb. We were limited by the time at our disposal.

Dr. L. M. Singhvi: Were any instances brought to your notice through which it became clear that the machinery for rehabilitation was not only tardy but was very non-cooperative in terms of giving loans or in terms of giving any other rehabilitation grant, that it took a long time and, generally, it did not bring any response from the unemployed goldsmiths?

Shri S. S. Khera: I find it difficult to answer this question. We did not make any detailed survey.

Dr. L. M. Singhvi: No instances were brought to your notice?

Shri S. S. Khera: I do not recall any specific instance. On the other hand, I do believe that there was a particular picture before us that there were procedural delays and obstacles like that. But I really cannot recall any specific instance. I wish I could but I can't.

Dr. L. M. Singhvi: Would it be correct to infer, as I think we would be entitled to infer from the reading of the report, that the machinery for the enforcement of gold control

was neither effective nor equitable and, if that is so, would you say in what terms it was not effective and not equitable.

Shri S. S. Khera: Have we said that in our report?

Dr. L. M. Singhvi: I would draw your attention to page 6 of your Report. In para 13(c) you have stated:

‘the lack of adequate machinery for effective and equitable enforcement of the Control.’

I infer that this means that, as a matter of fact, the machinery for the enforcement of gold control was neither effective nor equitable.

Shri S. S. Khera: We did not make any detailed inquiry but we certainly had an impression that the machinery needed tightening up.”

“*Dr. L. M. Singhvi:* The Informal Group used the evidence of the decline in the seizures of gold as the basis for concluding, for the time being, that it was a significant decline in the extent of smuggling. However, since the time the report was made, there have been larger seizures of gold. Would you be justified in coming to the conclusion that the same yardstick which was used by the Informal Group at that time for judging that there has been a reduction in the extent of smuggling could be used now for proving that there has been a rise in the extent of smuggling.

Shri S. S. Khera: In order to answer your question, I believe that I would need to make a more scientific statistical analysis. I should like to ask a number of questions, for instance, are the seizures fewer and larger and what is the pattern of seizures. Are there fewer and larger seizures? What kind of people are being caught? There are a number of other questions. However, when we made our report, we did not make any analysis but I would certainly suggest that an analysis be made.”

This official testimony roundly demonstrates in my opinion that the Government have been pursuing its gold control policy with faithful and unflinching tenacity but without any data, without an adequate analysis and indeed without a dependable and competent evaluation of the gold control measure. This is like formulating policies and enacting legislation on the basis of dreamy any mystical revelations rather than basing the law on a sober appraisal of the evidence of the naked eye.

It is axiomatic that all possible measures have to be taken to check gold smuggling. Towards this end, this Parliament enacted a new customs law, and gave extensive powers to the customs authority. It is time that a stringent and rigorous gold control measure could further aid the anti-smuggling operations by making it "less easy to dispose of smuggled gold in the internal market." But this has only limited validity. In the first place by adopting this measure we would be punishing the goldsmiths for our failure to apprehend the smuggler. Secondly, it is wrongly assumed that the gold control measure is confined only to the objective of making it more difficult to dispose of smuggled gold in the internal market. Evidently, what is actually happening is that myriads of goldsmiths and their families are being heartlessly penalised by an abrupt, aimless and groping piece of legislation, which may or may not yield any concrete economic gains. One wonders if this bull-in-a-china-shop experimentalism has been unleashed by the Administration in a fit of absent-mindedness.

Numerous are the objections to the scheme of gold control embodied in the Bill. To discuss them at length would be to embark on writing a dissertation, but I shall attempt to outline some of these objections in brief.

The measure precludes a large number of self-employed goldsmiths from their ancestral trade, without providing adequate resources and machinery for their rehabilitation. In the context of massive unemployment in the country, a measure which in effect consigns 5 lakhs to 15 lakhs of goldsmiths to the limbo of want and penury cannot but evoke our categorical rejection. The cost of rehabilitating them would be an added burden on our exchequer and the social economic consequences of this large scale unemployment cannot be viewed with equanimity.

Secondly, smuggling of gold has not really been reduced or checked by this measure and this is now officially conceded.

A new disturbing factor in our economy is introduced in the form of this Bill without any commensurate advantage. The cost of administration and the cost of rehabilitation would be very considerable, the unemployment situation is likely to worsen, clandestine transactions appear to be mounting and smuggling is said to have devised new and more cautious techniques. Rural credit has suffered a set-back. Hoarded gold has not become available for promoting investment and economic growth. The net result is a highly expensive and arbitrary administrative superstructure which has no sizeable economic efficacy. It appears to me that gold administration would functionally be a mere adjunct to the customs

administration and this is quite clearly superfluous. It seems that we are occupied with the task of first creating problems and then riding our hobby horses to arrive at our pet solutions. The end result is that the accumulation of our problems becomes increasingly complex and insolvable. In seeking to enact this gold control measure, we are once again putting the cart before the horse in our accustomed way, for we are embarking upon this ambitious programme without public education, without the administrative machinery, without a programme for rehabilitating the unemployed and in short, without any proper preparation. Our concerns therefore inevitably suffer, our objectives are inexorably undermined.

NEW DELHI;

L. M. SINGHVI.

Dated the 10th September, 1964.

Bill No. 47B of 1963

THE GOLD (CONTROL) BILL, 1963

(As reported by the Joint Committee)

(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.)

A

BILL

to provide, in the economic and financial interests of the community, for the control of the production, supply, distribution, use and possession of, and business in, gold and ornaments and other articles of gold and for matters connected therewith.

Be it enacted by Parliament in the Fifteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- | | | |
|----|---|--|
| 5 | 1. (1) This Act may be called the Gold (Control) Act, 1964. | Short title, extent, applica- tion and com- mence- ment. |
| | (2) It extends to the whole of India and it applies also to citizens of India outside India. | |
| | (3) It shall come into force on such date as the Central Govern- ment may, by notification in the Official Gazette, appoint. | |
| 10 | 2. In this Act, unless the context otherwise requires,— | Defini- tions. |
| | (a) "Administrator" means the Administrator appointed under section 18; | |
| | (b) "company" means any company as defined in section 3 of the Companies Act, 1956; | |
| 15 | (c) "certified goldsmith" means a dealer who holds a valid certificate granted or deemed to be granted under section 13 recognising him as a goldsmith; | |

(d) "dealer" means any person who carries on, directly or otherwise, the business of—

(1) making, manufacturing, preparing, buying, selling, supplying, distributing, melting, processing or converting ornaments; 5

(2) buying, selling, supplying or distributing gold for the purpose of making, manufacturing or preparing ornaments;

(3) melting, processing or converting gold for the purpose of making, manufacturing or preparing ornaments, 10 whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes—

(a) an undivided Hindu family which carries on such business;

(b) a local authority, company, society registered under 15 the Societies Registration Act, 1860, co-operative society registered under any law with respect to co-operative societies 21 of 1860. club, firm or other association which carries on such business, or

(i) buys ornaments, or gold for the purpose of making ornaments, from, or 20

(ii) makes or manufactures ornaments for,

(iii) processes, melts or converts ornaments, or gold for the purpose of making ornaments, for

(iv) sells, supplies or distributes ornaments, or gold 25 for the purpose of making ornaments, to,

its members; and

(c) a commission agent, broker, *del credere* agent, auctioneer or other mercantile agent, by whatever name called, who carries on such business on behalf of any principal; 30

but does not include the Reserve Bank of India, the State Bank of India, any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959, or any 38 of banking company as defined in clause (c) * * of section 5 of the Banking Companies Act, 1949, in so far as such bank sells 35 10 or transfers or exhibits for sale or transfer any gold

Explanation.—For the purposes of this Act—

(a) every person who acts as an agent of a dealer residing outside India and carries on the business of such dealer in India or acts on behalf of such dealer as— 40

(i) a mercantile agent as defined in the Sale of Goods Act, 1930; or

(ii) an agent for handling gold or documents of title relating to gold; or

(iii) an agent for the collection or payment of sale price of gold or as a guarantor for such collection or payment; and

(b) every branch in India of a firm or company having its registered office outside India,

shall be deemed to be a dealer;

(e) "gold" means gold, including its alloy, whether virgin, melted, re-melted, wrought or unwrought in any shape or form, of a purity of not less than nine carats and includes any gold coin (whether legal tender or not), any ornament and any other article of gold;

(f) "ornament" means any article in a finished form, meant for personal adornment or for the adornment of any idol, deity or any other object of religious worship, made of, or manufactured from, gold, whether or not set with stones or gems, real or artificial, or with pearls, real, cultured or imitation or with all or any of them and includes parts, pendants or broken pieces of ornaments;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "primary gold" means gold in any unfinished form and includes all ingots, bars, blocks, slabs, billets, shots, pellets, rods and wires;

(i) "refiner" means the owner or occupier of a refinery;

(j) "refinery" means a place where gold is melted, assayed, refined, alloyed or subjected to any other process for the purpose of making primary gold and includes a place where gold is assayed at the request of any dealer or other person, whether for the purpose of making primary gold or not, but does not include any place used by a dealer for the purposes permitted under clause (d).

CHAPTER II

CONTROL OF BUSINESS IN GOLD

3. (1) Subject to the other provisions of this Act,—

(a) a dealer shall not make, manufacture or prepare—

(i) any article of gold other than ornament, or

(ii) any article containing gold of any purity;

(b) a refiner shall not make, manufacture or prepare—

(i) any article of gold other than primary gold, or

(ii) any article containing gold of any purity; and

Prohibition of manufacture of articles of gold in certain cases.

(c) any other person shall not make, manufacture or prepare any article of gold or any article containing gold of any purity,

unless such dealer, refiner or other person is, on an application made by him in this behalf (which shall be accompanied by such fee as the Administrator may by direction specify and different fees may be specified for different classes of cases), authorised by the Administrator, by general or special order, to make, manufacture or prepare such article; and in granting such authorisation, the Administrator may, by the order aforesaid, also require such dealers, refiners or other persons or any class of them to pay such charges for supervision by the Administrator as may be specified in such order.

(2) A certified goldsmith may, and no other dealer shall, accept any ornament having gold of a purity exceeding fourteen carats for polishing or repair.

(3) A dealer (including a certified goldsmith) may accept any ornament having gold of any purity for the purpose of making, manufacturing or preparing new ornament or ornaments having gold of a purity not exceeding fourteen carats:

Provided that a certified goldsmith may, in accordance with the provisions of section 13, accept any ornament having gold of a purity exceeding fourteen carats for the purpose of making, manufacturing or preparing new ornaments having gold of a purity exceeding fourteen carats.

Restrictions on the making, etc., of ornaments and other articles of gold.

4. (1) Save as provided in section 13,—

(a) no dealer, whether licensed under this Act or not, shall—

(i) make, manufacture or prepare, or

(ii) sell or otherwise transfer, agree to sell or otherwise transfer, or expose or offer for sale or transfer, and

(b) no person shall place any order with any dealer, whether licensed under this Act or not, for the making, manufacture or preparation of,

any ornament having gold of a purity exceeding fourteen carats.

(2) No person shall make or manufacture any article of gold of a purity exceeding fourteen carats:

Provided that—

(i) any refiner may, if authorised by the Administrator to do so by general or special order, make, manufacture or have in

his possession, custody or control any primary gold containing gold of a purity exceeding fourteen carats, and

(ii) any refiner or dealer who as such refiner or dealer acquires or comes into the possession of any primary gold, or ornament or other article of gold, of a purity exceeding fourteen carats under any provision of this Act shall convert that gold, ornament or article into gold of a purity not exceeding fourteen carats within such period as the Administrator may by general or special order grant.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Administrator may by general or special order permit any person to make, manufacture or prepare any ornament, or other article of gold, of a purity exceeding fourteen carats subject to such conditions (including conditions as to the payment of any fee or charges for supervision) and restrictions as may be specified in the order.

(4) Every person who makes, manufactures or sells any primary gold shall, unless the Administrator by notification in the Official Gazette, otherwise directs, put a stamp on each piece of primary gold,—

(i) certifying the purity of gold contained in such primary gold and the date of making or manufacturing thereof; and

(ii) containing such descriptive and other particulars which may enable the identification of the maker or manufacturer of such primary gold, as may be prescribed.

(5) No stamp referred to in sub-section (4) shall be used in stamping any primary gold unless such stamp has been approved and registered by the Administrator.

5. (1) Except in the case of any quantity of gold acquired after the date of making any return under this Act, no dealer, and no refiner, who is licensed under this Act, shall have in his possession or under his control any gold which has not been included in such return:

Restric-
tions on
possession
and sale
of gold.

Provided that any gold acquired after the date of making such return shall be included in the next succeeding return.

(2) Save as otherwise provided in this Act,—

(a) a refiner may sell or deliver gold only to a dealer licensed under this Act in accordance with the conditions and restrictions, if any, contained in the dealer's licence but shall not sell or deliver gold to any other person:

Provided that a refiner may sell gold to any person on production by that person of a permit granted by the Adminis-

trator in this behalf or to such other person as the Administrator may, by general or special order, authorise in this behalf;

(b) a dealer licensed under this Act may, in accordance with the conditions and restrictions, if any, contained in his licence, buy or otherwise acquire, or agree to buy or otherwise acquire, gold, not being ornament, only from a dealer, or refiner, licensed under this Act but not from any other person: 5

Provided that any such dealer may buy or otherwise acquire or accept gold, not being ornament, from any person if such gold has been included in a declaration made by that person under Part XIIA of the Defence of India Rules, 1962, or under section 16, or if in respect of such gold no such declaration is required and a permit has been obtained under sub-section (3); 10

(c) a dealer licensed under this Act may, in accordance with the conditions and restrictions, if any, contained in his licence— 15

(i) sell or otherwise transfer, or agree to sell or otherwise transfer, or

(ii) expose or offer for sale or transfer,

gold, not being ornament, only to a dealer, or refiner, licensed under this Act but not to any other person: 20

Provided that a dealer licensed under this Act may sell gold, not being ornament, to any person on production by that person of a permit granted by the Administrator in this behalf;

(d) a person other than a dealer licensed under this Act shall not buy or agree to buy or otherwise acquire or agree to acquire gold, not being ornament, except in accordance with a permit granted by the Administrator or in accordance with such authorisation as the Administrator may, by general or special order, make in this behalf, nor shall he otherwise acquire or agree to acquire such gold except by succession, in- 25
testate or testamentary: 30

Provided that a refiner may buy or accept gold from a dealer licensed under this Act;

(e) a person acquiring gold in accordance with any general or special authorisation made by the Administrator shall not— 35

(i) sell or otherwise transfer, or agree to sell or otherwise transfer, or

(ii) expose or offer for sale or transfer,

such gold to any person other than a person authorised by the Administrator by general or special order in this behalf. 40

(3) Any gold (other than ornament) which is not required to be declared under this Act may be sold or otherwise transferred or hypothecated, pledged, mortgaged or charged under and in accordance with a permit granted by the Administrator in this behalf.

5 6. (1) No person shall make, advance or grant any loan to any other person on the hypothecation, pledge, mortgage or charge of any gold other than ornament unless a permit has been obtained under sub-section (3) of section 5 or unless such gold has been included, if so required, in a declaration or a further declaration
10 made under Part XIIA of the Defence of India Rules, 1962, or under section 16.

Prohibition of loans or hypothecation of gold.

(2) No person who is a dealer, whether licensed or not, shall—

(a) carry on business as a dealer in the same premises in which he or any other person carries on business as a money-
15 lender or banker involving the hypothecation, pledge, mortgage or charge of any gold,

(b) (i) sell or otherwise transfer to any person any gold on the hypothecation, pledge, mortgage or charge of which he has advanced any loan, whether before or after the 10th day of
20 January, 1963, or

(ii) return such gold to the borrower, whether before or after the repayment of the loan,

except under and in accordance with such conditions, limitations or restrictions, if any, as may be imposed by the Administrator in this
25 behalf.

(3) No pawnee who is not a dealer shall sell any gold pledged with him, on the failure of the pawnor to redeem such gold, except in accordance with such conditions as may be prescribed.

CHAPTER III

30 LICENSING OF DEALERS AND REFINERS AND CERTIFICATION OF GOLDSMITHS

7. (1) Save as otherwise provided in this Act, no dealer who is
registered under any law with respect to sales tax shall carry on
business as such dealer unless he holds a valid licence issued in this
behalf by the Administrator.

Licensing of dealers.

35 (2) A licence issued under sub-section (1) may contain such conditions and restrictions as the Administrator may think fit to impose and different conditions and restrictions may be imposed for different classes of dealers.

(3) Every dealer who is registered under any law with respect to sales tax shall, as soon as possible after such registration and in any case before the expiry of thirty days thereafter, make to the Administrator an application in such form and on payment of such fee as may be prescribed, for the issue of a licence under this section. 5

(4) Any dealer who is not required to be registered under any law with respect to sales tax may, if he likes, also make to the Administrator an application in accordance with the foregoing provisions for the issue of a licence under this section and any licence issued in pursuance of such application may contain such conditions and restrictions as the Administrator may think fit to impose and different conditions and restrictions may be imposed for different classes of applicants. 10

(5) Nothing in the foregoing provisions of this section shall be deemed to prohibit any dealer who is required to apply for a licence under this section from carrying on his business as such dealer for the period within which he is required to apply for such licence and if he has applied for such licence, until he is granted a licence or is, by a notice in writing, informed by the Administrator that a licence cannot be granted to him. 20

(6) On the receipt of an application for the issue of a licence under this section, the Administrator may, after making such inquiry, if any, as he may consider necessary, by order in writing either grant the licence or reject the application for the same:

Provided that no application for the issue of a licence made by a dealer registered under any law with respect to sales tax whether before or after the commencement of this Act shall be rejected unless the Administrator is satisfied that any statements made in the application for the issue of the licence are incorrect or false in material particulars or that the applicant for the licence has contravened any of the provisions of this Act or the provisions of any other law for the time being in force in so far as it prohibits or restricts the bringing into or taking out of India of any goods (including coins, currency, whether Indian or foreign, and foreign exchange), or the dealings in such goods by way of acquisition or otherwise and unless the applicant for the licence has been given a reasonable opportunity of showing cause against such rejection. 25 30 35

(7) A licence granted under this section shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fee as may be prescribed and 40

the provisions of this section relating to the first issue of a licence shall apply as far as may be in relation to such renewal.

5 (8) In the case of any dealer who immediately before the date of coming into force of this Act was licensed as a dealer under Part XIIA of the Defence of India Rules, 1962, the provisions for the application of a licence shall not apply and the licence of such dealer may be renewed on the expiration thereof in accordance with the provisions contained hereinbefore.

10 8. (1) Save as otherwise provided in this Act, no person shall carry on business as a refiner unless he holds a valid licence issued in this behalf by the Administrator. Licensing
of refiners.

15 (2) A licence issued under sub-section (1) may contain such conditions and restrictions as the Administrator may think fit to impose and different conditions and restrictions may be imposed for different classes of refiners.

20 (3) Every person who intends to carry on business as a refiner may, if he had a refinery in existence immediately before the 10th day of January, 1963, make to the Administrator an application in such form and on payment of such fee as may be prescribed, for the issue of a licence under sub-section (1).

25 (4) A person to whom a licence to carry on business as a refiner is issued under sub-section (1) shall not carry on business as such refiner in the same premises in which he or any other person carries on business as a dealer or business as a money-lender or banker involving the hypothecation, pledge, mortgage or charge of any gold.

30 (5) Notwithstanding anything contained in sub-section (1), a refiner who has made an application under sub-section (3) for the issue of a licence to carry on business, may carry on business as a refiner, pending the grant of a licence unless he is, by a notice in writing, informed by the Administrator that the application has been rejected.

35 (6) No person shall establish any refinery unless he has obtained a valid licence from the Administrator on an application in accordance with the foregoing provisions for the issue of a licence under this section.

(7) On the receipt of an application for the issue of a licence under this section, the Administrator may, after making such inquiry, if any, as he may consider necessary, by order in writing either grant the licence or reject the application for the same:

Provided that no application for the issue of a licence made by a refiner shall be granted unless the Administrator is satisfied having regard to—

- (a) the number of refineries existing in the area in which the applicant intends to carry on business as a refiner,
- (b) the demand for primary gold in that area,
- (c) the facilities existing in that area for the assay of gold by any method other than the touch-stone method,
- (d) the turnover of the applicant during the year immediately before the 10th January, 1963, or immediately before the date of the application for the issue of the licence, whichever is later,
- (e) the suitability or otherwise of the applicant, and
- (f) the public interest,

that the licence applied for should be granted:

Provided further that no application for the issue of a licence made by a refiner shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against such rejection.

(8) A licence granted under this section shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fee as may be prescribed and the provisions of this section relating to the first issue of a licence shall apply as far as may be in relation to such renewal.

(9) In the case of any refiner who immediately before the date of coming into force of this Act was licensed as a refiner under Part XIIA of the Defence of India Rules, 1962, the provisions for the application of a licence shall not apply and the licence of such refiner may be renewed on the expiration thereof in accordance with the provisions contained hereinbefore.

Cancellation of licences by Administrator.

9. A licence granted under section 7 or section 8 may be cancelled by the Administrator if he is satisfied that any statements made in the application for the issue of the licence or in relation to the licence are incorrect or false in material particulars or that the holder of the licence has contravened any of the provisions of this Act

or the provisions of any other law for the time being in force in so far as it prohibits or restricts the bringing into or taking out of India of any goods (including coins, currency, whether Indian or foreign, and foreign exchange), or the dealings in such goods by way of acquisition or otherwise:

Provided that no licence shall be cancelled unless reasonable opportunity has been given to the holder thereof to show cause why the licence shall not be cancelled.

10. A dealer who ceases to be registered under any law with respect to sales tax or who discontinues his business in gold or a refiner who discontinues his business as such may make an application to the Administrator for cancellation of his licence as dealer or refiner, as the case may be, and thereupon the Administrator may cancel his licence. Cancellation of licence on application by dealer or refiner.
11. A dealer who, being required by section 7 to make an application for a licence, has failed to do so within the period specified therefor or whose application for the issue of a licence has been rejected or whose licence has been cancelled or a refiner whose application for the issue of a licence under section 8 has been rejected or whose licence has been cancelled shall not, after the expiry of that period or after such rejection or cancellation, as the case may be, carry on his business and shall, within thirty days from the date of such expiry, rejection or cancellation, sell or otherwise transfer to any dealer or refiner licensed under this Act the entire quantity of gold including ornaments, in his possession on the date of such expiry, rejection or cancellation and send intimation thereof to the Administrator. Disposal of gold in the possession of dealers or refiners in certain cases.
12. Every dealer and every refiner who is licensed under this Act shall display his licence at a conspicuous place of the premises in which the business of such dealer is carried on or the premises in which the refinery is located. Display of licences.
13. (1) A dealer who is not required by sub-section (3) of section 7 to make an application for the issue of a licence under that section and has not obtained any licence in pursuance of an application made by him under sub-section (4) of that section and who does not employ hired labour in actually making, manufacturing or preparing any ornament and is not himself in the employment of another dealer may, if he was carrying on business as a dealer for more than a year immediately before the 10th day of January, 1963,— Certified gold-smiths.
- (a) accept from any person, not being a refiner or a certified goldsmith or other dealer, any ornament or ornaments having
- 437 G of I Ex.—6.

gold of a purity exceeding fourteen carats for the purpose of making, manufacturing or preparing, and

(b) make, manufacture or prepare,

new ornament or ornaments from that ornament or those ornaments subject to such restrictions relating to the purity and weight of gold contained in the new ornament or ornaments as may be prescribed. 5

(2) No such dealer shall after the commencement of this Act accept any such ornament or ornaments for the purpose of making, manufacturing or preparing new ornament or ornaments as aforesaid, unless he has before such commencement obtained under Part XIIA of the Defence of India Rules, 1962, a certificate recognising him as a goldsmith: 10

Provided that if the Administrator considers it necessary in the public interest so to do, he may, on application made to him in this behalf by a dealer, grant to him a certificate recognising him as a goldsmith in such form and on payment of such fee as may be prescribed. 15

(3) A certificate granted under Part XIIA of the Defence of India Rules, 1962, shall, unless the context otherwise requires, be deemed for the purposes of this Act to be a certificate granted under this section. 20

(4) A certificate granted under this section shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fee as may be prescribed * * *

(5) A certificate granted under this section may be cancelled by the Administrator— 25

(i) if the certified goldsmith is, at any time after the grant of the certificate to him, registered under any law with respect to sales tax, or

(ii) on an application made to the Administrator for such cancellation by the certified goldsmith who ceases to work as a goldsmith, or 30

(iii) if the Administrator is satisfied that any statements made in the application for the issue of the certificate or in relation to the certificate are incorrect or false in material particulars or that the holder of the certificate has contravened any of the provisions of this Act: 35

Provided that no certificate shall be cancelled under clause (i) or clause (iii), unless reasonable opportunity has been given to the holder thereof to show cause why the certificate shall not be cancelled. 40

(6) Every certified goldsmith shall have in his possession the certificate granted to him while he carries on business as such goldsmith and shall produce it for inspection on demand by any officer authorised by the Administrator in this behalf.

- 5 (7) Notwithstanding anything contained in section 4, a certified goldsmith may have in his possession, custody or control primary gold of a purity exceeding fourteen carats by melting or processing or converting any ornament which has been accepted by him under this section for making, manufacturing or preparing new ornament
10 or ornaments:

Provided that a certified goldsmith shall not have at any time in his possession, custody or control any quantity of such primary gold in excess of one hundred grammes obtained in the process of making, manufacturing, or preparing new ornament or ornaments.

- 15 (8) A dealer who may, in accordance with the provisions of this section, accept any ornament or ornaments having gold of a purity exceeding fourteen carats for the purpose of making, manufacturing or preparing new ornament or ornaments having gold of a purity exceeding fourteen carats, may send to any other such dealer who
20 possesses equipments for drawing wires or casting dies, or who is a specialist in stone setting, enamelling or polishing,—

(a) the ornament or ornaments so accepted, whether before or after melting, for the purpose of drawing wires or casting dies;
or

- 25 (b) where new ornament or ornaments have been made, manufactured or prepared out of the ornament or ornaments so accepted, such new ornament or ornaments for setting stones, enamelling or polishing;

30 and such other dealer shall, after drawing wires or casting dies or, as the case may be, after setting stones, enamelling or polishing, return them to the dealer from whom they were received.

14. (1) No dealer who has not obtained a licence under section 7 or a certificate under section 13 shall carry on business as a dealer unless he has been registered and possesses a certificate.

- 35 (2) Every such dealer shall make an application for the grant of a certificate within such time, in such form and on payment of such fee as may be prescribed.

Registration and certification of dealers not falling under section 7 or 13.

(3) If the Administrator is satisfied that an application for registration is in order, he shall, in accordance with such rules as may be prescribed, register the applicant and grant him a certificate of registration in the prescribed form:

Provided that no application for the grant of a certificate of registration shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against such rejection.

(4) A certificate granted under this section shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fee as may be prescribed, and the provisions of this section relating to the first issue of a certificate shall apply as far as may be in relation to such renewal,

(5) The provisions of sections 9, 10, 11 and 12 shall, as far as may be, apply to a dealer registered under this section as they apply to a dealer licensed under section 7,

(6) Nothing in this section shall be deemed to prohibit any dealer who has been registered under this section from applying at any time for a licence under section 7 if he likes to do so and on his being licensed under section 7, the registration certificate issued to him under this section shall be cancelled.

Special
provision
regarding
public
religious
institu-
tions.

15. (1) Notwithstanding anything contained in Chapter II and the foregoing provisions of this Chapter, any public religious institution such as a temple, mutt, church, mosque, gurdwara or any other place of public religious worship, not being a dealer or refiner licensed under this Act, may receive gold of any purity in any form as offering.

(2) Any such institution—

(a) may retain the gold in the form in which it is received as offering so long as it is used exclusively for the purposes of the institution;

(b) shall not convert any gold in its possession into gold of a purity exceeding fourteen carats or make, manufacture or prepare ornament or any other article of gold of a purity exceeding fourteen carats unless such institution has been authorised by the Administrator by general or special order subject to such conditions as may be laid down, to do so;

(c) shall not sell or otherwise transfer gold in any form in its possession unless such gold has been converted into gold of a purity not exceeding fourteen carats and unless, in the case of gold other than ornament, the sale or transfer is to a dealer or refiner licensed under this Act;

(d) shall maintain such accounts and submit such returns as to the quantity, description and other particulars of gold possessed, received, sold or otherwise transferred by it, as may be prescribed.

- 5 (3) The person in charge of the management of any such institution shall be responsible for anything done or omitted to be done under this section,

CHAPTER IV

DECLARATION OF GOLD

- 10 16. (1) If any person who has made a declaration as to gold other than ornaments owned by him under Part XIIA of the Defence of India Rules, 1962, acquires by succession, intestate or testamentary, or in accordance with a permit granted by the Administrator, or parts with, after such declaration any quantity of gold, not being
 15 ornament, he shall, as often as he acquires or parts with any quantity of gold, make within thirty days from the date of such acquisition or parting with, a further declaration to the Administrator in the prescribed form stating the quantity, description and other prescribed particulars of such gold acquired or parted with by him and
 20 giving the prescribed particulars of the person from whom such gold was acquired or in whose favour such gold was parted with, as the case may be.

Declaration as to possession of gold other than ornament.

- (2) If any person who did not own any gold, not being ornament, at any time during the period commencing on the 10th January,
 25 1963, and ending with the 9th February, 1963, acquires, after the expiry of that period by succession, intestate or testamentary, or in accordance with a permit granted by the Administrator any quantity of gold, not being ornament, he shall, within thirty days from the date of such acquisition, make a declaration to the Administrator in
 30 the prescribed form stating the quantity, description and other prescribed particulars of such gold owned by him on the date of such declaration.

- (3) If any person who has made a declaration under sub-section (2) acquires by succession, intestate or testamentary, or in accordance with a permit granted by the Administrator, or parts with, any
 35 quantity of gold, not being ornament, he shall, as often as he acquires or parts with any quantity of gold, make within thirty days from the date of such acquisition or parting with a further declaration to the Administrator in the prescribed form stating the quantity, description and other prescribed particulars of such gold acquired or
 40 parted with by him and giving the prescribed particulars of the

person from whom such gold was acquired or in whose favour such gold was parted with, as the case may be.

(4) For the removal of doubt, it is hereby declared that a declaration referred to in this section and section 17 shall be made—

(a) in the case of gold belonging to a minor or a lunatic, by the guardian or manager of such minor or lunatic, as the case may be;

(b) in the case of gold belonging to an idol or a deity, by the manager of such idol or deity, whether known as *shebait* or manager or by any other name;

(c) in the case of gold belonging to a person whose properties are under the management of a Court of Wards, by the manager of such Court;

(d) in the case of gold belonging to a person whose properties are under the management of any administrator or receiver, by such administrator or receiver;

(e) in the case of gold vested in an executor or an administrator of a will or other testamentary disposition, by such executor or administrator;

(f) in the case of gold belonging to the members of a firm, by any partner of such firm;

(g) in the case of gold belonging to an undivided Hindu family, by the head or *karta* of such family;

(h) in the case of gold which is the subject matter of any public or private trust, by a trustee of such trust;

(i) in the case of gold belonging to a company incorporated outside India, by any person in charge of the management of such company in India;

(j) in the case of gold belonging to a temple, mutt, church, mosque or any other religious institution by the person in charge of the management of such temple, mutt, church, mosque or other religious institution;

(k) in the case of gold which is wakf property, by the mutawalli of such wakf;

(l) in the case of gold belonging to any society, club or other association, by the secretary or manager of such society, club or other association.

(5) No person who is required to make a declaration as to gold other than ornament owned by him under the Defence of India Rules,

1962, or this section or exempted from making such declaration under the said Rules or sub-section (6) of this section shall, after the commencement of this Act, acquire any gold other than ornament except--

- 5 (a) by succession, intestate or testamentary, or
(b) in accordance with a permit granted by the Administrator in this behalf.

(6) No declaration or further declaration shall be required to be made under the foregoing provisions of this section in respect of--

- 10 (a) any gold, whether contained in one or more pieces, owned by a minor unless the weight of such gold exceeds twenty grammes;
(b) any gold, whether contained in one or more pieces, owned by an individual other than a minor unless the weight of
15 such gold exceeds fifty grammes;
(c) any gold, whether contained in one or more pieces, referred to in clauses (b) to (l) of sub-section (4) unless the weight of such gold exceeds fifty grammes:

20 Provided that no declaration or further declaration as aforesaid shall be required in respect of any gold owned by a family if the total weight of such gold whether contained in one or more pieces and whether owned by a member of the family severally or by all the members jointly or partly in the one way and partly in the other, does not exceed one hundred grammes:

25 Provided further that where the Central Government is of the opinion that it is necessary so to do for carrying out the purposes of this Act, the Government may at any time, by general or special order, require that in respect of any gold not required to be declared under clause (a) or clause (b) or clause (c) or under the foregoing
30 proviso, a declaration or further declaration as to the quantity, description and other prescribed particulars of or relating to such gold shall be made to the Administrator by such person and in such form and manner and within such time as may be prescribed.

35 *Explanation.*—For the purposes of this sub-section and section 17, the expression “family” shall be deemed to consist of--

- (i) the husband, wife and one or more minor children, or
(ii) any two or more of them,
but shall not be deemed to include any other person.

(7) Any person in possession or control of any gold, not being
40 ornament, shall be presumed, until the contrary is proved, to be the owner thereof.

Declaration
as to possession of
ornaments.

17. (1) Where the Central Government is of the opinion that it is necessary so to do for carrying out the purposes of this Act, that Government may at any time, by general or special order, require that any person or class of persons owning ornaments shall, within such period as may be specified in the said order, make a declaration to the Administrator in the prescribed form as to the quantity, description and other prescribed particulars of the ornaments owned by such person or each person in that class: 5

Provided that it shall not be necessary to make any such declaration where the value, calculated in the prescribed manner, of the ornaments does not exceed— 10

(a) where such ornaments are owned by a person, twenty-five thousand rupees;

(b) where such ornaments are owned by a family, fifty thousand rupees. 15

Explanation.—For the purposes of this section, any person in possession or control of any ornament shall be presumed, until the contrary is proved, to be the owner thereof.

(2) If any person who has made a declaration under sub-section (1) acquires or parts with any ornament after such declaration, he shall, as often as he acquires or parts with any ornament, make within thirty days from the date of such acquisition or parting with a further declaration to the Administrator in the prescribed form stating the quantity, description and other prescribed particulars of such ornament acquired or parted with by him and giving the prescribed particulars of the person from whom such ornament was acquired or in whose favour such ornament was parted with, as the case may be. 20 25

(3) If any person who, at any time during the period within which the declaration referred to in sub-section (1) is to be made, does not own any ornament, or owns ornaments not exceeding in quantity or value such limit as may be specified by the Central Government under sub-section (1), acquires thereafter any ornament or ornaments so as to exceed such limit, he shall, within thirty days from the date the limit is exceeded, make a declaration to the Administrator in the prescribed form stating the quantity, description and other prescribed particulars of such ornament or ornaments owned by him on the date of such declaration. 30 35

(4) If any person who has made a declaration under sub-section (3) acquires or parts with any quantity of ornaments, he shall, 40

as often as he acquires or parts with any quantity of ornaments, make, within thirty days from the date of such acquisition or parting with, a further declaration to the Administrator as provided in sub-section (2).

5

CHAPTER V

ADMINISTRATOR

18. (1) The Central Government shall, by notification in the Official Gazette, appoint an Administrator for carrying out the purposes of this Act

Appoint-
ment and
functions
of Admin-
istrator.

10 (2) The Administrator shall discharge his functions subject to the general control and directions of the Central Government.

(3) The Administrator may by general or special order authorise such person (including any officer or authority subordinate to a State Government) as he thinks fit to exercise all or any of the powers
15 exercisable by him under this Act and different persons may be authorised to exercise different powers;

Provided that no officer below the rank of Collector of Customs or Central Excise or Collector of a district shall be authorised to hear appeals under sub-section (2) of section 30.

20 (4) Subject to any general or special direction given or condition attached by the Administrator, any person authorised by the Administrator to exercise any powers may exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by way of authorisation.

25

CHAPTER VI

RETURNS AND ACCOUNTS

19. Dealers (including certified goldsmiths) and refiners, shall furnish to the Administrator such returns as to the quantity description and other prescribed particulars of gold in their possession or
30 under their control in such form and within such time as may be prescribed, and different returns may be prescribed for different classes of dealers or refiners.

Returns
as to
gold.

20. (1) Dealers (including certified goldsmiths) and refiners, shall keep such accounts and in such form and manner as may be prescribed
35 of the gold held, bought or sold or otherwise received or disposed of by them, in respect of each transaction and different accounts may be prescribed for different classes of dealers or refiners.

Accounts.

(2) Every such dealer, certified goldsmith and refiner shall, if so required by the Administrator,—

(a) produce before the Administrator any account, register or other document, and

(b) furnish to the Administrator any information relating to the quantity of gold in his possession or under his control or to the purchase, sale or delivery of gold by him.

(3) All accounts, registers and other documents, relating to any quantity of gold or to the purchase, sale or delivery thereof and any gold in the possession or under the control of the dealer, refiner or certified goldsmith, wherever kept, shall be open to inspection by any person authorised by the Administrator in this behalf.

CHAPTER VII

MISCELLANEOUS PROVISIONS

Power of Administrator to issue directions and orders.

21. (1) The Administrator may, if he thinks fit, issue directions or orders, not inconsistent with this Act, for carrying out the purposes of this Act.

(2) The Administrator, so far as it appears to him to be necessary or expedient for securing the equitable distribution and availability at fair prices of gold and ornaments, may by order published in the Official Gazette,—

(a) regulate the prices at which any gold or ornament may be brought or sold by any dealer or refiner, and

(b) regulate by licences, permits or otherwise, the distribution, transport, disposal, acquisition, possession, use or consumption of gold by dealers or refiners or other persons.

Persons permitted to buy gold to observe conditions

22. Any person authorised by the Administrator by general or special order, or holding a permit issued by the Administrator, for buying or otherwise acquiring gold shall observe such conditions, be subject to such restrictions and furnish such accounts or returns, or both, to the Administrator, as may be prescribed.

Prohibition of use of buildings for carrying on unlicensed refinery.

23. No person,—

(a) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, shall let the same or any part thereof with the knowledge that the same or part thereof is intended to be used as a refinery or wilfully allow any person to use such premises or any part thereof as a refinery unless the refiner has been licensed under this Act; or

(b) being the tenant, lessee or occupier or any person in charge of any premises, shall use or allow any person to use

such premises or any part thereof as a refinery unless the refiner has been licensed under this Act.

24. Where the business of a dealer licensed or registered under this Act or a refinery is transferred by sale, gift, bequest or otherwise or is transmitted by inheritance or is transferred by way of lease, the transferee, heir or lessee shall not carry on such business or run the refinery either in his own name or in some other name unless the transferee, heir or lessee has, before the expiry of thirty days after the date of such transfer or transmission, made to the Administrator an application for the issue of a licence or certificate of registration in accordance with the provisions of section 7 or section 8 or section 14:

Transfer or transmission of business.

Provided that nothing in this section shall be deemed to prohibit the transferee, heir or lessee from carrying on business as a dealer or refiner for the period within which he is required to apply for such licence or registration and if he has applied for such licence or registration, until he is granted the licence or certificate of registration or is, by a notice in writing, informed by the Administrator that such licence or certificate cannot be granted to him.

25. (1) All particulars contained in any return or declaration made or accounts, registers or other documents produced in accordance with this Act shall, save as otherwise provided in sub-section (4), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall be entitled to require the Administrator or any person authorised by the Administrator under this Act or any officer or other employee of the Government to produce before it any such return, declaration, accounts, registers or other documents or any part thereof or to give evidence before it in respect thereof.

Secrecy and fidelity.

(2) Any person authorised by the Administrator under this Act and any other person discharging any functions in the implementation of the provisions of this Act shall not divulge any information relating to any particulars contained in any return or declaration made to, or any accounts, registers or other documents produced before, or inspected by, the Administrator or any such person.

(3) The Administrator or any gazetted officer authorised by him in this behalf may request any officer of Government to furnish any information relating to any particulars contained in any return or declaration made to, or any accounts, registers or other documents produced before or inspected by such officer of Government under the provisions of any law if, in the opinion of the Administrator or the gazetted officer aforesaid, such information is necessary for the

implementation of the provisions of this Act; and when such request is made, the officer of Government shall comply with such request notwithstanding the provisions of any such law forbidding the furnishing of such information.

(4) Nothing in this section shall apply to and in relation to the disclosure of any of the particulars referred to in sub-section (1) or sub-section (2)—

(a) for the purposes of any prosecution for any offence, or

(b) to any officer or other employee of Government where it is necessary to make such disclosure to such officer or other employee for the purposes of this Act or of any other law

Power to enter, search and seize, to obtain information and to take samples.

26. (1) Any officer authorised by the Administrator in this behalf may—

(a) enter and search the establishment of a dealer or any refinery; 15

(b) seize any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened, along with the package, covering or receptacle, if any, in which such gold is found;

(c) seize any books of account, return or any other document relating to any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened. 20

(2) Any officer authorised by the Central Government in this behalf may— 25

(a) enter and search any premises, not being a refinery or establishment referred to in sub-section (1), vaults, lockers or any other place whether above or below ground;

(b) seize any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be contravened, along with the package, covering or receptacle, if any, in which such gold is found; 30

(c) seize any books of account, return or any other document relating to any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened. 35

(3) Any officer authorised by the Administrator in this behalf may search any person if that officer has reason to believe that such person has secreted about his person—

5 (a) any gold in respect of which such officer suspects that any provision of this Act has been, or is being, or is about to be contravened,

(b) any document relating to such gold,

and seize any such gold or document in his possession.

(4) When any such officer as aforesaid is about to search the
10 person referred to in sub-section (3), he shall, if such person so requires, take such person to the nearest gazetted officer authorised by the Administrator or to the nearest magistrate.

(5) Any officer authorised by the Administrator in this behalf may, if he suspects that any person has contravened, or is contraven-
15 ing or is about to contravene any provision of this Act, detain such person and take him to a gazetted officer authorised by the Administrator or to a magistrate for a search of his person and seizure of any such gold or document as is referred to in sub-section (3).

(6) A gazetted officer or magistrate before whom any person is
20 brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(7) No female shall be searched by any one excepting a female.

(8) Any officer authorised by the Administrator in this behalf may, if he has reason to believe that any person has contravened, or
25 is contravening or is about to contravene, any provision of this Act, arrest such person and shall as soon as possible inform him of the grounds for such arrest and shall take such arrested person to the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place
30 of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(9) Any officer who has arrested any person under this section shall, for the purpose of releasing such person on bail or otherwise,
35 have the same powers and be subject to the same provisions as the officer-in-charge of a police station has and is subjected to under the Code of Criminal Procedure, 1898.

(10) Any officer authorised by the Administrator in this behalf may, if he has reason to believe that any aircraft, vehicle or animal or any vessel is being, or is about to be, used for carrying any gold in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened, at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and 5

(a) rummage and search any part of the aircraft, vehicle or vessel;

(b) examine and search any goods in the aircraft, vehicle, 10 vessel or on the animal;

(c) seize any such gold as is referred to above and any books of account or other document relating to such gold;

(d) break open the lock of any door or package for exercising the powers conferred by clauses (a), (b) and (c), if keys are 15 withheld;

(e) If it becomes necessary to stop any such aircraft, vehicle or animal or vessel, he may use all lawful means for stopping it, and where such means fail, the aircraft, vehicle, vessel or animal may be fired upon. 20

(11) The provisions of the Code of Criminal Procedure, 1898, relating to search and seizure shall, so far as they are applicable, apply in relation to search and seizure made under this section. 5 of 1898.

(12) The Administrator shall have power—

(a) to take samples of gold from any dealer, refiner or 25 other person in such manner as may be prescribed;

(b) to send such sample for assay or analysis to such authority as may be prescribed and to require such authority to send a report to the Administrator as a result of the assay or analysis. 30

(13) Where at the time of arrest of any person or seizure of any gold, document or other goods in the possession of any person, such person makes a statement to the officer making such arrest or seizure, that officer shall on demand by such person furnish him with a copy of the statement. 35

Explanation.—Any reference to gold in this section and in sections 29 and 30 shall, unless the context otherwise requires, include any article containing gold of any purity, referred to in sub-section (1) of section 3.

27. (1) Any gazetted officer authorised by the Administrator in this behalf may hold an inquiry for the purpose of ascertaining whether any contravention of any of the provisions of this Act has been, is being, or is about to be, committed and shall for the purposes of such inquiry have power to summon any person whose attendance he considers necessary either to give evidence or to produce any document or other thing.

Power to hold inquiry and to call for information.

(2) The Administrator may call for information from any person for the purpose of ascertaining whether or not there has been any contravention of any of the provisions of this Act.

28. (1) The following conveyances shall be liable to seizure and confiscation:—

Confiscation of conveyances.

(a) any vessel which is or has been within the Indian waters, any aircraft which is or has been in India or any vehicle which is or has been in any area in India, while constructed, adapted, altered or fitted in any manner for the purpose of concealing gold;

(b) any conveyance from which the whole or any part of gold is thrown over-board, staved or destroyed so as to prevent seizure by any officer authorised by the Administrator;

(c) any conveyance which having been required to stop or land under sub-section (10) of section 26 fails to do so, except for good and sufficient cause;

(d) any conveyance from which any gold cleared for exportation is unloaded without the permission of the officer authorised by the Administrator in this behalf;

(e) any conveyance carrying imported gold which has entered India and is afterwards found with the whole or substantial portion of such gold missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the gold.

(2) Any conveyance or animal used as a means of transport or in the carriage of any gold in respect of which any provision of this Act has been, or is being or is about to be, contravened, shall be liable to seizure and confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken

all such precautions against such use as are for the time being specified in the rules made in this behalf by the Central Government:

Provided that where any such conveyance or animal is used for the carriage of goods or passengers for hire, the owner of the conveyance or animal shall be given an option to pay in lieu of confiscation of the conveyance or animal, a fine not exceeding the value of such conveyance or animal.

Confiscation of gold seized and imposition of penalty.

29. (1) Any gold seized under section 26 together with the package, covering or receptacle, if any, in which such gold is found shall be liable to confiscation.

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(2) Any person who in relation to any gold does or omits to do any act which act or omission would render such gold liable to confiscation under sub-section (1), or abets the doing or omission of such an act shall be liable, in addition to any liability for punishment under this Act, to a penalty not exceeding five times the value of the gold or one thousand rupees, whichever is more, irrespective of whether such gold has been confiscated.

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Adjudication, appeal and revision.

30. (1) The confiscation, * * fine or penalty under section 28, section 29, proviso to sub-section (3) of section 31 or sub-section (8) of this section or under any rule made under this Act may be adjudged—

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(a) without limit, by an officer not below the rank of Deputy Collector of Customs or Central Excise;

(b) where the value of conveyance or animal or gold or all of them together with the package, covering or receptacle, if any, in which such gold is found, liable to confiscation does not exceed ten thousand rupees, or where the fine or penalty proposed to be imposed does not exceed two thousand rupees, by an officer not below the rank of Assistant Collector of Customs or Central Excise or by any other officer of the Central Government or a State Government authorised by the Central Government in this behalf:

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Provided that no order of adjudication of confiscation, fine or penalty shall be made unless the owner of the conveyance, animal or gold or other person concerned—

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(i) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such conveyance, animal or gold or to impose a penalty;

(ii) is given an opportunity of making a representation in writing within such reasonable time as may be specified in

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the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(iii) is given a reasonable opportunity of being heard in the matter:

5 Provided further that the notice referred to in clause (i), and the representation referred to in clause (ii), of the foregoing proviso may, at the request of the owner or other person concerned, be oral:

10 Provided also that where no such notice is given within a period of six months of the seizure of the conveyance, animal or gold or such further period as the Collector of Customs or Central Excise may specify, such conveyance, animal or gold shall be returned after the expiry of that period to the person from whose possession it was seized.

(2) An appeal shall lie to the Administrator—

15 (a) from every order of adjudication of confiscation, fine or penalty under sub-section (1),

(b) from any other decision or order passed by an officer not above the rank of Collector of Customs or Central Excise, within a period of three months from the date of the communication
20 of the order or decision:

Provided that where the decision or order appealed against relates to any penalty levied under this Act, any person desirous of appealing against such decision or order shall, pending the appeal, deposit the penalty levied:

25 Provided further that where in any particular case, the Administrator is of opinion that the deposit of penalty levied will cause undue hardship to the appellant, he may in his discretion dispense with such deposit, either unconditionally or subject to such conditions as he may deem fit.

30 (3) Every person adjudicating under this section and the Administrator hearing any appeal under sub-section (2) shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of witnesses;

35 (b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.

(4) Every person adjudicating under this section and the Administrator hearing any appeal shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898

5 of 1898.

(5) The Administrator may, of his own motion, call for and examine the record of any proceeding in which any order of adjudication of confiscation, fine or penalty, or any other decision or order, referred to in clause (b) of sub-section (2), has been made, but no appeal against such order or decision has been preferred under that sub-section, for the purpose of satisfying himself as to the legality or propriety of any such order or decision and may pass such order thereon as he thinks fit:

Provided that no order enhancing any penalty or fine in lieu of confiscation shall be passed under this provision unless the person affected by the proposed order has been given a reasonable opportunity of showing cause against it:

Provided further that no order shall be passed by the Administrator under this sub-section after the expiry of two years from the date of the order or decision referred to in sub-section (2).

(6) The Central Government may, of its own motion or on application made by any person aggrieved by an order passed on appeal under sub-section (2) or on revision under sub-section (5) within six months from the date of communication of such order, call for and examine the record of any proceeding in which such order has been passed on appeal or revision for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order thereon as the Central Government thinks fit.

(7) Notwithstanding anything contained in any other law—

(a) any order passed by the Central Government in revision,
(b) subject to such order of the Government, any order passed on appeal or revision under sub-section (2) or sub-section (5), and

(c) subject to the final order of the Central Government in revision and the order on appeal or revision under sub-section (2) or sub-section (5) any order of adjudication of confiscation, fine or penalty, or any other decision or order referred to in clause (b) of sub-section (2),

shall be final and shall not be called in question in any court.

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(8) Whenever confiscation of any gold or conveyance or animal is authorised by this Act, the officer adjudging it may give to the owner thereof an option to pay in lieu of confiscation such fine as the said officer thinks fit:

5 Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 28, such fine shall not exceed the value of such gold, conveyance or animal.

(9) For the removal of doubt it is hereby declared that the payment of fine in lieu of confiscation under sub-section (8) shall not
10 prevent the infliction of any punishment to which the person affected is liable under the provisions of this Act.

31. (1) Whoever fails or omits to make any return as required Penalties by section 15 or 19 or any declaration including a further declaration as required by section 16 or 17 without any reasonable cause, or makes any statement in such return or declaration which is false
15 and which he either knows or believes to be false or does not believe to be true, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(2) Whoever,—

20 (i) refines, processes, melts, converts, deals or makes, manufactures or prepares any article of gold in contravention of any provision of this Act,

(ii) has in his possession or under his control any quantity of gold in contravention of any provision of this Act,

25 (iii) sells or otherwise transfers or agrees to sell or transfer, or exposes or offers for sale or transfer, or delivers or otherwise parts with, any gold in contravention of any provision of this Act,

30 (iv) buys, or otherwise acquires, or accepts gold in contravention of any provision of this Act,

(v) allows any person to use any premises or any part thereof as a refinery in contravention of any provision of this Act,

35 (vi) makes, manufactures or prepares, or places any order for the making, or the manufacture or preparation of, sells or otherwise transfers or agrees to sell or transfer, or exposes or offers for sale or transfer any ornament or any primary gold in contravention of section 3 or section 4 or any other provision of this Act,

40 (vii) possesses, delivers, sells or otherwise transfers any gold in contravention of the provisions of section 5 or section 6,

(viii) carries on business as a dealer, refiner, banker or money-lender in contravention of the provisions of section 6, 7, 8 or 14,

(ix) carries on business as a certified goldsmith in contravention of the provisions of section 13,

(x) falsely stamps any primary gold with the intention of causing it to be believed that such primary gold contains gold of such purity as is mentioned in such stamp or sells or otherwise transfers, or agrees to sell or otherwise transfer or exposes or offers for sale or transfer any such falsely stamped primary gold,

(xi) makes or counterfeits any stamp intending that the same shall be used for the purpose of stamping any primary gold, knowing the same to be counterfeit, or uses any such counterfeit stamp,

shall be punishable with imprisonment for a term which may extend to two years and also with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.

(3) Whoever contravenes any other provision of this Act for which no punishment is provided in the foregoing provisions of this section shall be punishable with imprisonment for a term which may extend to one month, or with fine, or with both:

Provided that—

(i) whoever fails or omits to keep or to produce any account or other document or to furnish any information when required to do so under any provision of this Act;

(ii) whoever fails or omits to display any licence as required by section 12,

shall be liable to a penalty not exceeding five hundred rupees to be adjudged under sub-section (1) of section 30.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence under this section shall be tried summarily by a magistrate.

32. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the

offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm.

33. No prosecution for any offence punishable under this Act shall be instituted against any person except by, or with the consent of, the Administrator or any person authorised by the Administrator in this behalf.

Limitation
of prose-
cutions.

34. (1) No suit, prosecution or other legal proceedings shall lie against the Central Government or the Administrator or any person, authorised by the Central Government or the Administrator, or performing any functions in the implementation of the provisions of this Act, for anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Act or any rule or order made thereunder.

Protection
of action
taken in
good faith.

(2) No suit or other legal proceedings shall lie against the Central Government or the Administrator or any person, authorised by the Central Government or the Administrator, or performing any functions in the implementation of the provisions of this Act, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Act or any rule or order made thereunder.

35. (1) The Administrator and any person authorised by him or the Central Government, and performing any functions in the implementation of this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Adminis-
trator, etc
to be
public
Servants
and appli-
cation of
certain
provisions
of Central
Excises
and
Salt Act.

45 of 1860.

1 of 1944.

(2) The provisions of sections 11, 15 and 23 of the Central Excises and Salt Act, 1944, relating to—

(i) recovery of any sum payable to the Government, or
(ii) rendering of assistance by any officer of Police or Customs or Revenue, and

(iii) failure of any Central Excise Officer, on duty, respectively, shall apply subject to such modifications and adaptations as may be specified by the Central Government by notification in the Official Gazette in regard to like matters under the provisions of this Act. 5

Power to exempt.

36. Where on the recommendation of the Administrator or otherwise the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by order and subject to such conditions, if any, as it may specify in the order—

(a) exempt any dealer or any refiner or any other person from the operation of all or any of the provisions of this Act; and 10

(b) as often as may be, revoke any such order and again subject, by order any dealer or any refiner or any other person to the operation of such provisions.

Effect of Act and rules, etc., inconsistent with other enactments.

37. The provisions of this Act or any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. 15

Act not to apply to Government.

38. Nothing in this Act shall apply to or in relation to— 20

(a) any gold belonging to, or in the possession or under the control of, the Government,

(b) any refinery owned or occupied, or any business of a dealer carried on, by the Government.

Government may perform functions and exercise powers of the Administrator.

39. The Central Government may perform all or any of the functions of the Administrator and may, by notification in the Official Gazette, exercise all or any of the powers conferred by this Act on the Administrator, if that Government is of the opinion that it is necessary or expedient in the public interest so to do. 25

Licensing of dealer in areas without sales tax law

40. If in any territory there is no law with respect to sales tax in force, then, every dealer carrying on his business as such dealer in that territory, whose annual turnover is not less than ten thousand rupees, shall be required to be licensed in accordance with the provisions of this Act as if he were a dealer registered under law with respect to sales tax and accordingly all the provisions of this Act shall apply to such registered dealer. 30 35

1 of 1872.

41. Where an order purports to have been signed by any person authorised by the Administrator in this behalf in exercise of any power conferred by or under any provision of this Act, a court shall presume, within the meaning of the Indian Evidence Act, 1872, that such order was so made by that person. Presumption as to orders.

42. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act. Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

10 (a) the additional particulars to be stamped on each piece of primary gold;

(b) the conditions subject to which a pawnee may sell gold pledged with him;

15 (c) the forms of applications for the grant or renewal of licences, permits and certificates under this Act and the fees payable in respect of such applications;

(d) the forms of such licences, permits and certificates;

(e) the procedure for registration of a dealer under section 14;

20 (f) the accounts to be maintained and the returns to be submitted by public religious institutions under section 15;

(g) the forms of declarations under sections 16 and 17 and the particulars regarding gold or persons from whom or in whose favour it was acquired or parted with, as the case may be;

25 (h) the forms in which, and the period within which, returns as to gold shall be submitted by dealers and refiners under section 19;

30 (i) the forms in which accounts shall be kept by dealers and refiners under section 20 and the manner of keeping such accounts;

(j) the conditions and restrictions subject to which persons may be permitted to buy gold and the accounts and returns to be furnished by such persons;

35 (k) the precautions to be taken against the use of any conveyance or animal as a means of transport or in the carriage of gold in contravention of the provisions of this Act;

(l) the fees payable in respect of appeals and applications for revision under this Act;

(m) the manner of publication of notices and orders under this Act;

(n) any other matter which has to be or may be prescribed. 5

(3) In making rules under this section, the Central Government may provide that any person committing any breach of any rule shall, where no other penalty is provided by this Act, be liable to a penalty not exceeding two thousand rupees.

(4) Every rule made by the Central Government under this 10 section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two * * successive sessions, and if, before the expiry of the session in which it is so laid or the * * session immediately following, both Houses 15 agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under 20 that rule.

Repeal
and sav-
ings.

43. (1) As from the commencement of this Act, the provisions of Part XIIA of the Defence of India Rules, 1962, shall stand repealed 10 of 189, and upon such repeal, section 6 of the General Clauses Act, 1897, shall apply as if the said Part were a Central Act. 25

(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897, anything done or any action taken (including any application made to, or any order made or licence issued by, the Gold Board, Administrator or other competent authority) under or in pursuance of the provisions 30 of Part XIIA of the Defence of India Rules, 1962, shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act. 10 of 1897.

S. L. SHAKDHER,
Secretary.